

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RAYNE DEE WELLS, JR., )  
 ) CASE NO. C10-1235-JLR-MAT  
Petitioner, )  
 )  
v. ) ORDER RE: PENDING MOTIONS  
 )  
RON VAN BOENING, )  
 )  
Respondent. )  
\_\_\_\_\_ )

Petitioner, proceeding *pro se* in this 28 U.S.C. § 2254 habeas proceeding, filed a Motion for Appointment of Counsel (Dkt. 12), a Motion for Discovery (Dkt. 14), and a Motion for Extension of Time to File a Reply Traverse (Dkt. 16). Having considering the pending motions, the Court finds and concludes as follows:

(1) Petitioner's motion for appointment of counsel (Dkt. 12)<sup>1</sup> is DENIED. There is no right to have counsel appointed in cases brought under 28 U.S.C. § 2254 unless an evidentiary hearing is required. *See Terravona v. Kincheloe*, 852 F.2d 424, 429 (9th Cir.

<sup>1</sup> Petitioner included an application to proceed *in forma pauperis* (IFP) with his motion for appointment of counsel. However, because petitioner already paid the filing fee in this matter, the Court considers herein only the request for appointment of counsel.

ORDER RE: PENDING MOTIONS  
PAGE -1

01 1988); *Brown v. Vasquez*, 952 F.2d 1164, 1168 (9th Cir. 1992); and Rule 8(c) of the Rules  
02 Governing Section 2254 Cases in the United States District Courts. The Court may exercise  
03 its discretion to appoint counsel for a financially eligible individual where the “interests of  
04 justice so require.” 18 U.S.C. § 3006A. Here, petitioner fails to demonstrate that the interests  
05 of justice are best served by appointment of counsel at the present time.

06 (2) Petitioner seeks an extension of time to file a traverse in support of his habeas  
07 petition. (Dkt. 16.) He points, in support of his request, to his multiple transfers, extensive  
08 periods of segregation, and his inability to access his legal materials. Because the Court finds  
09 this request reasonable under the circumstances as explained by petitioner, and because the  
10 Court finds additional information necessary in this matter as described below, petitioner’s  
11 motion for an extension of time to submit a traverse (Dkt. 16) is GRANTED. Petitioner shall  
12 submit a response to the Answer on or before **January 3, 2011**. Respondent shall submit a  
13 reply on or before **January 7, 2011**, and respondent’s Answer is RENOTED for consideration  
14 as of that same date.

15 (3) Petitioner also seeks to conduct discovery in this matter. (Dkt. 14.) As  
16 observed by respondent in his objection to the motion for discovery (Dkt. 15), petitioner  
17 appears to argue that the record does not include all of the collateral attacks he filed in relation  
18 to the conviction at issue in this habeas proceeding and, therefore, the evidence showing he has  
19 properly exhausted all of his claims. Petitioner seeks, in part, records associated with (1) the  
20 state court proceedings associated with this habeas petition (*State v. Wells*, Skagit County  
21 Cause No. 03-1-00690-3); and (2) a separate civil action between petitioner and the City of  
22 Burlington initiated in 2009 (*Wells v. City of Burlington*, Skagit County Cause No.

01 09-2-01562-0 and Supreme Court No. 84789-4). (Dkt. 14.) As argued by respondent,  
02 however, petitioner's contentions as to the existence of additional collateral attacks and the  
03 exhaustion of his claims should be raised in petitioner's traverse. Moreover, in so doing,  
04 petitioner must provide more detail in support of his contentions and directly respond to the  
05 arguments raised in respondent's objection to the motion for discovery. Respondent, in his  
06 reply, shall respond to petitioner's arguments and confirm his position as to the question of  
07 whether the record in this matter is complete. The submission of petitioner's traverse and  
08 respondent's reply will provide the information necessary for the Court's consideration of  
09 petitioner's motion for discovery. Petitioner's motion for discovery (Dkt. 14) is, accordingly,  
10 **RENOTED** for consideration on **January 7, 2011**.

11 (4) Petitioner failed to note any of his motions in accordance with Local Civil Rule  
12 7. Petitioner is advised that, in the future, any motions he files should be properly noted in  
13 accordance with the local rules. *See* Local CR 7(b)(1) (requiring the inclusion of a noting date  
14 in the caption of the motion) and CR 7(d)(2), (3) (requiring most nondispositive motions filed  
15 in a case involving a party under civil or criminal confinement to be noted no earlier than the  
16 third Friday after filing and service of the motion).

17 (5) The Clerk is directed to send a copy of this Order to the parties and to the  
18 Honorable James L. Robart.

19 DATED this 17th day of November, 2010.

20  
21   
22 Mary Alice Theiler  
United States Magistrate Judge